



APPENDIX

The provisions of Section 77 (11 U. S. C. A. 205) most pertinent in this case are the following:

“(b) A plan of reorganization within the meaning of this section (1) shall include provisions modifying or altering the rights of creditors generally, or of any class of them, secured or unsecured, either through the issuance of new securities of any character or otherwise; * * *

(4) shall provide for fixed charges (including fixed interest on funded debt, interest on unfunded debt, amortization of discount on funded debt, and rent for leased railroads) in such an amount that, after due consideration of the probable prospective earnings of the property in light of its earnings, experience and all other relevant facts, there shall be adequate coverage of such fixed charges by the probable earnings available for the payment thereof; * * *

* * *

“(d) * * * the Commission shall render a report and order in which it shall approve a plan, which may be different from any which has been proposed, that will in its opinion meet with the requirements of subsections (b) and (e) of this section, and will be compatible with the public interest; or it shall render a report and order in which it shall refuse to approve any plan. In such report the Commission shall state fully the reasons for its conclusions. * * *

“(e) Upon the certification of a plan by the Commission to the Court * * * all parties in interest * * * may file with the Court their objections to such plan, * * * and their claims for equitable treatment. The judge shall * * * hear all parties in interest in support of, and in opposition to, such objections to the plan and such claims for equitable treatment. After such hearing, * * * the judge shall approve the plan if satisfied that (1) it com-

plies with the provisions of subsection (b) of this section, is fair and equitable, affords due recognition to the rights of each class of creditors and stockholders, does not discriminate unfairly in favor of any class of creditors or stockholders, and will conform to the requirements of the law of the land regarding the participation of the various classes of creditors and stockholders; * * *

"If the judge shall not approve the plan, he shall file an opinion, stating his conclusions and the reason therefor, and he shall enter an order in which he may either dismiss the proceedings, or in his discretion and on motion of any party in interest refer the proceedings back to the Commission for further action, in which event he shall transmit to the Commission a copy of any evidence received. * * *

* * *

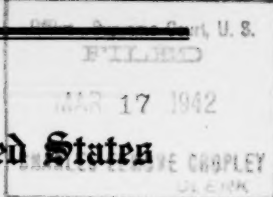
"If it shall be necessary to determine the value of any property for any purpose under this section, the Commission shall determine such value and certify the same to the Court in its report on the plan. The value of any property used in railroad operation shall be determined on a basis which will give due consideration to the earning power of the property past, present, and prospective, and all other relevant facts. In determining such value only such effect shall be given to the present cost of reproduction new and less depreciation and original cost of the property, and the actual investment therein, as may be required under the law of the land, in light of its earning power and all other relevant facts.

* * *

"(j) * * * The title of any owner, whether as trustee or otherwise, to rolling-stock equipment leased or conditionally sold to the debtor, and any right of such owner to take possession of such property in compliance with the provisions of any such lease or conditional sale contract, shall not be affected by the provisions of this section."

IN THE
Supreme Court of the United States

OCTOBER TERM, 1941



No. ~~██████████~~

47

IN THE MATTER OF

CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD
COMPANY,

Debtor and Cross Petitioner.

No. ~~875-883~~

GROUP OF INSTITUTIONAL INVESTORS, and MUTUAL SAVINGS
BANK GROUP,

Petitioners,

vs.

CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD
COMPANY, *et al.*,

Respondents.

No. ~~888~~

RECONSTRUCTION FINANCE CORPORATION,

Petitioner,

vs.

CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD
COMPANY, *et al.*,

Respondents.

**CROSS PETITION OF CHICAGO, MILWAUKEE, ST.
PAUL AND PACIFIC RAILROAD COMPANY FOR A
WRIT OF CERTIORARI TO THE UNITED STATES CIR-
CUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT
AND BRIEF IN SUPPORT THEREOF**

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March 16, 1942.

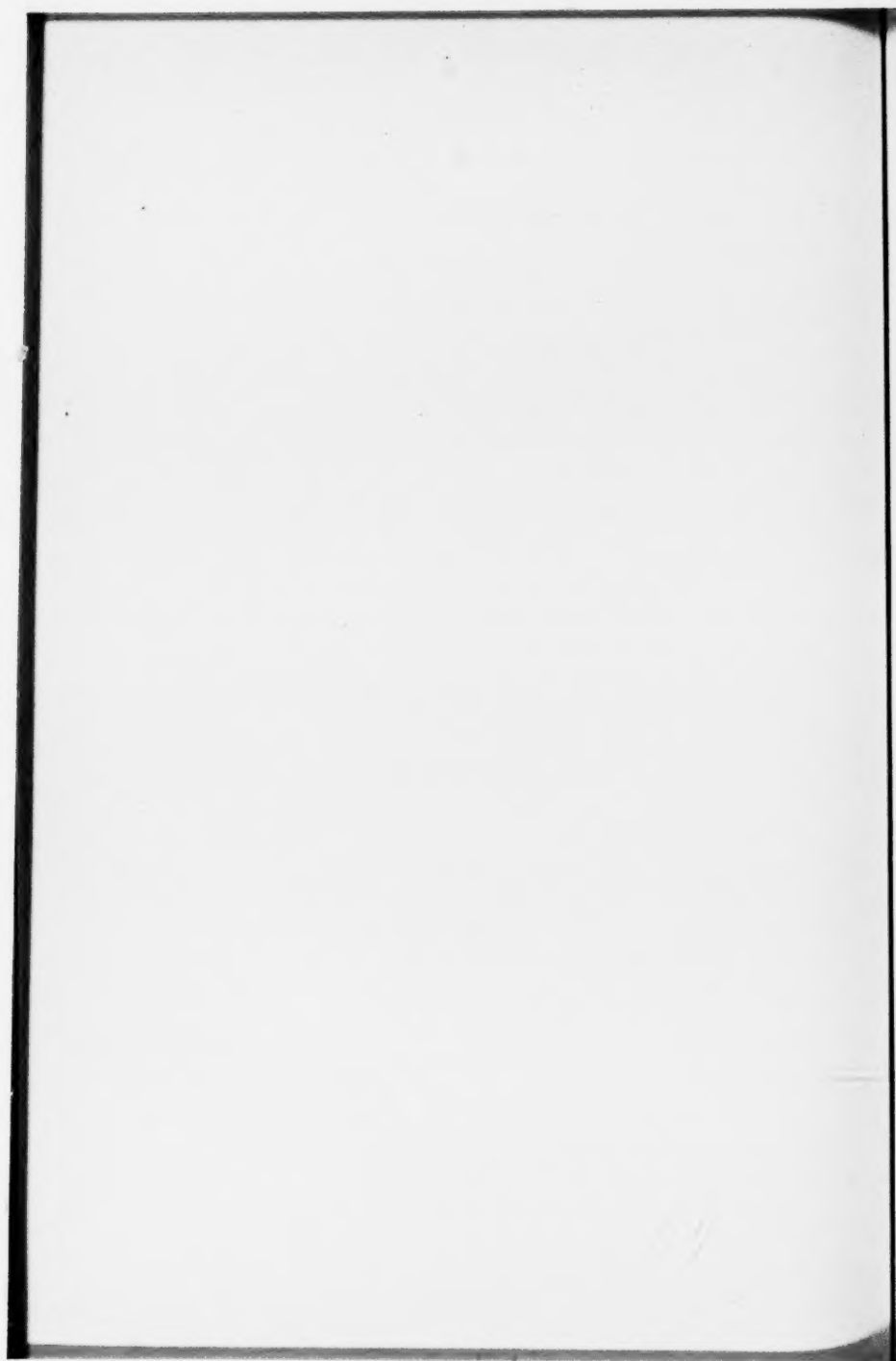


TABLE OF CONTENTS

	PAGES
Cross Petition	1
Reasons for Review	2
Brief in Support of Cross Petition	9

TABLE OF CASES

<i>Atchison, Topeka and Santa Fe Railroad Company v. United States</i> , 284 U. S. 248	16
<i>Case v. Los Angeles Lumber Products Company</i> , 308 U. S. 106	9
<i>Central Kentucky Natural Gas Co. v. Railroad Commission of Kentucky, et al.</i> , 290 U. S. 264	17
<i>Consolidated Rock Products Company v. Du Bois</i> , 312 U. S. 510	2, 3, 4, 7, 9, 10, 11, 12, 15, 20, 21, 22, 23

STATUTES CITED

Bankruptcy Act:	
Chapter VIII	22
Section 73	22
Section 77	3, 22
Section 77 Subsection (d)	3, 8
Section 77 Subsection (e)	3, 7, 15, 20
Section 77 Subsection (g)	22
Interstate Commerce Act:	
Section 19A	13

OTHER AUTHORITIES CITED

Supreme Court of the United States:	
Rule 38	2, 16
Rule 38 Paragraph 4, Subd. (b)	4



IN THE
Supreme Court of the United States

OCTOBER TERM, 1941

No.

IN THE MATTER OF

CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD
COMPANY,

Debtor and Cross Petitioner.

No. 875-883

GROUP OF INSTITUTIONAL INVESTORS, and MUTUAL SAVINGS
BANK GROUP,

Petitioners,

vs.

CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD
COMPANY, *et al.*,

Respondents.

No. 988

RECONSTRUCTION FINANCE CORPORATION,

Petitioner,

vs.

CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD
COMPANY, *et al.*,

Respondents.

**CROSS PETITION OF CHICAGO, MILWAUKEE, ST.
PAUL AND PACIFIC RAILROAD COMPANY FOR A
WRIT OF CERTIORARI TO THE UNITED STATES CIR-
CUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT
AND BRIEF IN SUPPORT THEREOF**

*To the Honorable, the Chief Justice and Associate Justices
of the Supreme Court of the United States:*

Chicago, Milwaukee, St. Paul and Pacific Railroad Com-
pany (herein called the Railroad Company), respondent in
the Proceedings Nos. 875-883 upon the Docket of this Court,
opposes as unwarranted the granting of a *writ of certiorari*
as asked by the Group of Institutional Investors and Mutual
Savings Bank Group, the Petitioners therein, for the pur-

pose of a review of the decision of the Circuit Court of Appeals for the Seventh Circuit, filed December 4, 1941. The Railroad Company's reasons for asking that the Petition of these two Groups be denied will be presented in an opposing Brief filed under these Docket numbers.

The Railroad Company nevertheless believes it essential, in order that it may not be held to have accepted as the law of this case the Opinion and Supplemental Opinion of the Circuit Court of Appeals and in order that vital interests of its security holders may be protected, to apply by way of a Cross Petition for a *writ of certiorari* for a review of the decision of the Circuit Court of Appeals on grounds differing from and wholly unrelated to those urged in the Petition filed by the two Groups.

For all purposes of this Cross Petition, the Railroad Company asks leave to refer to the certified Transcript and printed copies of the Records filed by the two Groups, as Petitioners in the Proceedings Nos. 875-883, and further asks that all such documents be deemed to accompany this Cross Petition within the requirements of Rule 38 of this Court.

Reasons for Review

The basic reasons which the Railroad Company urges for a review of the decision of the Circuit Court of Appeals are—

(a) that the decision of the Circuit Court of Appeals should be brought into harmony with the decision of this Court in *Consolidated Rock Products Company v. Du Bois*,* and

* This case is reported in 312 U. S., at page 510. In the interest of brevity the citation of the volume and page will be omitted in subsequent references throughout this Cross Petition and the annexed Brief.

(b) that this Proceeding should be referred back to the Interstate Commerce Commission in accordance with subsection (e) of Section 77 of the Act of Congress commonly known as the Bankruptcy Act (11 U. S. C. A., Sec. 205) for reconsideration under the provisions of the preceding subsection (d) unembarrassed by so much of the decision of the Circuit Court of Appeals as is inconsistent with the decision of this Court in *Consolidated Rock Products Company v. Du Bois*.

The propriety of a review of the decision of the Circuit Court of Appeals on these grounds is accentuated by the decision of the same Circuit Court of Appeals released February 9, 1942, relating to the pending reorganization of the Chicago and North Western Railway Company, in which that Court appears to have held that compliance with the decision of this Court in *Consolidated Rock Products Company v. Du Bois* may be dispensed with after a Plan of Reorganization certified to the District Court by the Interstate Commerce Commission "has the approval of the various groups of creditors"—a conclusion which seems an inexplicable one when it is considered—

(a) that under Section 77 of the Bankruptcy Act judicial approval must *precede* the submission of the Plan to creditors and the very purpose of the requirement for specific findings is to enable the Court properly to perform its judicial functions thereunder, and

(b) that in the present case the Circuit Court of Appeals (we think quite properly) *stayed* the submission of the Plan to the creditors of the Chicago, Milwaukee, St. Paul and Pacific Railroad Company

until the determination of the appeal then pending before it from the decision of the District Court—a stay which it declined to release and which still stands notwithstanding successive applications for its release by the Interstate Commerce Commission and by the two Groups (Tr. 2274; 2296).

For the purposes of this Cross Petition and the annexed supporting Brief, it will be sufficient to specify and limit the discussion to the more conspicuous features of the Plan of Reorganization and the decision of the Circuit Court of Appeals in respect thereto which the Cross Petitioner contends are at fundamental variance with the decision of this Court in *Consolidated Rock Products Company v. Du Bois* and which accordingly justify the issuance of a *writ of certiorari* under subdivision (b) of Paragraph 4 of Rule 38 of this Court.

These include—

(a) the treatment accorded holders of the General Mortgage Bonds,

(b) the treatment accorded the holders of the Fifty Year Mortgage 5% Bonds, and

(c) the treatment accorded the holders of the Railroad Company's Preferred Stock and Common Stock.

Even as to these subjects it will be unnecessary to do more than refer to the bald outlines of the Plan.

The financial structure of the Railroad Company is shown in detail in the original Report of the Interstate Commerce Commission (Tr. 2165-2269; Debtor's Court Exhibit 8). The Plan certified to the District Court by the In-

terstate Commerce Commission in tabulated form is attached to the Supplemental Report of the Interstate Commerce Commission (Tr. 1317).

The General Mortgage Bonds are outstanding in the amount of \$138,788,000, divided into five Series bearing interest rates varying from $3\frac{1}{2}\%$ to $4\frac{3}{4}\%$, all maturing May 1, 1989, and secured primarily by a first lien on 6,000 miles of railroad of high traffic density lying between the Missouri River and Lake Michigan. Under the Plan of Reorganization these General Mortgage Bonds, which had weathered every storm in the 46 year period preceding the filing of the Petition under Section 77 of the Bankruptcy Act, are offered for the full principal and accrued interest at the effective date of the Plan—25% in new First Mortgage 4% Bonds, 35% in General Mortgage $4\frac{1}{2}\%$ Income Bonds, Series A, 20% in General Mortgage $4\frac{1}{2}\%$ Income Bonds, Series B, and 20% in 5% Preferred Stock (Tr. 1317, 1340).

The Fifty Year 5% Bonds of 1975 are outstanding in the amount of \$106,395,096, and are secured by a lien (for practical purposes a first lien) on approximately 3,000 miles of railroad lying between the Missouri River and Puget Sound, and other properties, and by a second lien on all the properties upon which the General Mortgage is a first lien. Under the Plan of Reorganization these Fifty Year Bonds are offered for the full principal and accrued interest at the effective date of the Plan—15% in General Mortgage $4\frac{1}{2}\%$ Income Bonds, Series B, 60% in 5% Preferred Stock, and 25% in Common Stock (Tr. 1317, 1341).

It is to be noted:

- A. that the General Mortgage Bonds lose 75% of their first lien position and their fixed interest charge and

the Fifty Year Bonds lose 100% of their first lien position and their fixed interest charge;

- B. that all the General Mortgage Bonds, regardless of Series, are treated alike, although the interest rates upon the different Series vary between a low of $3\frac{1}{2}\%$ and a high of $4\frac{3}{4}\%$ with the discriminatory result that certain Series receive higher aggregate interest on the new securities to be taken in exchange and other Series receive lower aggregate interest;
- C. That all of the Fifty Year Bonds receive lower aggregate interest on the new securities than is borne by the Fifty Year Bonds;
- D. that the General Mortgage Bonds are relegated to a stock position for 20% of their debt and the Fifty Year Bonds are so relegated for 85% of their debt; and
- E. that all existing maturities of both the General Mortgage Bonds and the Fifty Year Bonds are either extended or eliminated by the substitution of stock (Tr. 2167; 2172; 2251; 2255).

No compensation is offered for these radical changes in the character and strategic positions of the General Mortgage Bonds and the Fifty Year Bonds; but, nevertheless, Adjustment Mortgage Bonds in the principal amount of \$182,873,693, secured by an indenture *wholly* subordinate to both the General Mortgage and the Fifty Year Mortgage are offered 1,788,655 shares of new Common Stock without par value which (taken at \$100 per share) represent an investment of \$178,865,500 (Tr. 2172; 2257; 1317).

Although no provision is made under the Plan of Reorganization for the Railroad Company's Preferred and Common Stock, the Interstate Commerce Commission made no Finding of value of the Railroad Company's properties as a whole and under the Supplemental Opinion of the Circuit Court of Appeals a specific Finding of value is held to be unnecessary, in this respect creating a direct conflict with the decision of the Circuit Court of Appeals for the Ninth Circuit in the matter of *The Western Pacific Railroad Company*, filed November 28, 1941 (Tr. 2335).

The Cross Petitioner submits that these provisions of the Plan of Reorganization and the treatment accorded the Railroad Company's security holders (none of which provisions is required to be modified as a consequence of the Opinion and decision of the Circuit Court of Appeals) involve specific departures from the decision of this Court in *Consolidated Rock Products Company v. Du Bois*, disregard the fundamental requirements of subsection (e) of Section 77 of the Bankruptcy Act and create confusion as to the law of the land in matters vitally affecting the public interest.

Other considerations will be presented in the annexed supporting Brief.

WHEREFORE, the Cross Petitioner respectfully prays that a writ of *certiorari* issue to the United States Circuit Court of Appeals for the Seventh Circuit, commanding said Court to certify and send to this Court, on a day to be determined, a full and complete transcript of the record of all of the proceedings had in this cause, to the end that this cause may be reviewed and determined by this Court; that the decree of the Circuit Court of Appeals and the decree of the District Court be reversed; and that this proceeding

be referred back to the Interstate Commerce Commission for reconsideration under the provisions of subsection (d) of Section 77 of the Act of Congress commonly known as the Bankruptcy Act, and further action in conformity with the decision and determination of this Court.

Dated, New York, N. Y., March 16, 1942.

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